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Department of Revenue

OFFICE Prime Minister's (Attorney-General)

STATION Madras

My No. 4850

Dated 18/12/31

Endorsement on 19.1

Pages in the file

(SUBJECT.)

Lands - (South Kanara) - Sutlur St - Encroachments - 288/31 - Reversion of land - Draft letter written - Approved

Ref.A3.No. 7016-31. South Kanara Collector's Office,

Mangalore, dated 9th Decr.1935.

From E. F. Gamme, Esquire, I.C.S.,

Collector of South Kanara

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Suits (South Kanara) - Puttur - Dt. Munsif's Court O.S.No. 288/31 - Kepu village - Assignment of land - Defence - Additional written statement.

F 9 (N)

Refce: B. P. Misc. No. 3054 dated 29-9-1931.

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F 3-5 (N)

(Q)

The above suit, the defence of which was sanctioned the Board in its proceedings quoted above, came up before the Dt. Munsiff Puttur for final decision on 7-12-1932 on which d it was dismissed with costs of the 1st defendant (Government The plaintiff preferred an appeal, which came up for hearing before the Subordinate Judge, Mangalore, on 15-11-1935. The Subordinate Judge having been of opinion that the sole question for determination is the indentification of the suit plots those that formed the subject matter of the darkhast grant o 1865, has remanded the suit for fresh disposal on the merits after framing a proper issue for determination - please see of the relevant portion of the remand order sent by the Government Pleader (enclosed).

2. The Government Pleader says that the plea of limit and adverse possession does not appear to have been raised in t written statement of the Collector and therefore suggests the filing of an additional statement raising specifically the of adverse possession. I enclose a copy of the Government Pleader's letter Ref.No.A.135/35 dated 30-11-1935, wherein he proposes certain additions to the written statement approved in the B.P. quoted above. The plea that the plaintif's suit

barred by limitation is already contained in para 8 of the written statement filed by Government. To raise the same plea again, though in another form seems quite unnecessary I, therefore, propose to substitute the following for the existing para 8 of the written statement already filed in Court.

"The plaintiff not having been in possession of the plaint plots at any time during the twelve years preceding the suit, he is not entitled to bring the suit. These plots having been, for over the statutory period of twelve years preceding the suit, in the possession of the Government, till their assignment in D.R.413/1339 and thereafter in that of defendents 2 and 3 adversely to the plaintiff, the plaintiff's suit is barred by limitation." I request Board's sanction to file the above additional statement.

3. A printed copy of the lower court judgment is enclosed for reference.

Your obedient servant,

For Collector.

10-12-35

A.S.No.154/1933 on the file of the Subordinate Court, South Kanara.

Remand Order. Relevant Portion.

The main question for decision in this case would be whether the properties comprised in the Darkhast grant of 1865 are identical with the suit property.

In paragraph 10 the learned District Munsif has stated n more than one place that it is really difficult to connect he properties mentioned in this darkhast grant with the ------ roperties now in suit. It appears to me however that it was ecessary that there should be definite finding either for or gainst this identification. The plaintiff has produced a plan xhibit E which relates to the darkhast grant of 1865 and I find rom the records that a commission has been issued and a plan repared of the suit properties. The learned District Munsif owever has not adverted to this plan at all. He has disposed f this issue by resting entirely upon the evidence of the 1st witness for the defendants, a Shanbhogue who is 50 years of age and has been a shanbhogue for about 13 years past. His ------ evidence, it is obvious, cannot touch the state of affairs that were in existence in 1865. The grant of 1865 describes the properties by name as well as by boundaries. It is pointed ou before me that one or two boundaries at least as mentioned in Exhibit E in the Commissioner's plan tally. It is also pointed out that the name Talipadpu given in the Darkhast grant applies to any property in the village. These facts indicate in my opinion that it is not impossible to identify the properties which are comprised in the Darkhast grant of 1865. I am also inclined to think that the learned District Munsif did not ----- probably pursue this question of identification further in view of the form in which the issue has been framed. This issue as it stands raises the question in the general form "whether plaintiff has a valid and subsisting title to the suit property". I am of opinion that the contention of the parties would be ---- focussed to the real question in the case, if this issue were -- more specific and ran as follows:-

Whether the properties claimed by the plaintiff under the darkhast grant of 1865 are the same as the suit properties.

I therefore frame the 1st issue accordingly and remand the case to the Lower Court for fresh disposal. Parties will be at liberty to adduce fresh evidence and the Lower Court may, if it thinks necessary, either of its own motion or on the application of the parties direct the issue of a commission for determining the properties that are comprised in the Darkhast grant of 1865. The costs incurred up to date will be costs in the cause.

(True Copy)

Ramadhanand
For Collector. 10.XII.

10.12.35.

Letter from M.R.Ry. K. Sadashiva Rao, Avl., B.A.,M.L.,
Government Pleader, Mangalore.
To the Collector, South Kanara, Mangalore.
Dated 30-11-1935, Ref.No.A135/35..

Suits - Appeal-Sub Court, Mangalore-A.S.154/1933 (Puttur Munsif's Court O.S.288/31) Kepu village.

Ref.A3.7016-31, dated 29-11-1935.

It is better that the grounds are made clear and the following additional paras added, after para 8 and before para 9 in the written statement

"The plaintiff not being in possession at any time twelve years preceding suit he is not entitled to bring this suit.

"The Government till the assignment of the plots in D.R.413/1339, and since then the defendants 2 and 3 being in possession of the suit property for more than twelve years preceding suit, adversely to the plaintiff asserting title in themselves, plaintiff's suit is barred by limitation."

It is better to move for the recasting of the 2nd issue as follows. "Is the suit barred by limitation and adverse possession".

The papers sent to me are herewith returned.

(True Copy)

madhavarao
For Collector. CO XII

10-12-35